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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/573,340	02/21/2007	Graeme David Richards	SPR00857P00030US	5387
38939	7590	12/30/2009		
DYKEMA GOSSETT PLLC 10 S. WACKER DR., STE. 2300 CHICAGO, IL 60606			EXAMINER BELL, KENT L	
			ART UNIT	PAPER NUMBER
			1661	
			MAIL DATE	DELIVERY MODE
			12/30/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/573,340	<b>Applicant(s)</b> RICHARDS, GRAEME DAVID	
	<b>Examiner</b> Kent L. Bell	<b>Art Unit</b> 1661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on application filed February 21, 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 40-76 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 40-76 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

***Election/Restrictions***

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 40,41,73 drawn to a method of increasing ploidy in cells of a woody perennial plant including exposing a treated bud to substantially constant illumination until growth from the treated tissue occurs.

Group II, claim(s) 42-59, drawn to a method of increasing ploidy in cells of a woody perennial plant including wherein the bud has been grafted onto a rootstock plant which comprises actively dividing cells and is apically or terminally dormant.

Group III, claim(s) 60 and 61, drawn to a method of increasing ploidy in cells of a woody perennial plant including at least partially enveloping the bud with a material capable of inhibiting gaseous exchange.

Group IV, claims 62-69, drawn to a method of increasing ploidy in cells of a woody perennial plant including at least partially enveloping the bud with a material capable of

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inhibiting gaseous exchanger, wherein the bud has been grafted onto a rootstock plant, is apically or terminally dominant and comprises actively dividing cells.

Group V, claims 70-72, drawn to a method of generating a woody perennial plant.

Group VI, claim 74 , drawn to a method of increasing ploidy in cells of a woody perennial plant including contacting a bud of the plant substantially continuously over a period of at least 1 day with an effective amount of a composition comprising an agent capable of inhibiting spindle formation.

Group VII, claims 75 and 76, drawn to a method of increasing ploidy in cells of a woody perennial plant including wherein the bud is grafted onto a rootstock plant , comprises actively dividing cells and is apically or terminally dominant, wherein the contacting commences substantially coincidental with breaking dormancy of the plant tissue.

The inventions listed as Groups I-VII do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: each of the groups include a feature of contacting a bud of a woody perennial plant with colchicine, however NPL reference to Lapins (Poloploidy and Mutations Induced in Apricot By Colchicine Treatment) reference teaches contacting a bud of a woody perennial plant with colchicine , therefore each group listed lacks the same or corresponding special technical feature.

### **Future Correspondence**

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Kent L. Bell whose telephone number is (571) 272-0973. The Examiner can normally be reached Monday through Thursday from 6:00 am to 4:30 pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Anne Marie Grunberg, can be reached at (571) 272-0975.

The fax phone number for the group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (571) 272-1600.

K. L. Bell

/Kent L. Bell/

Primary Examiner, Art Unit 1661